

Appl. No 10/669,985
Atty. Docket No. CM2698
Amdt. dated November 17, 2004
Reply to Office Action of October 4, 2004
Customer No. 27752

REMARKS

Claim Status

Claims 1 and 3-16 are pending in the present application. No additional claims fee is believed to be due.

Claim 2 is canceled without prejudice.

Claim 1 has been amended to recite that the flexible absorbent article has a flexibility when measured according to stiffness tester AB Lorentzen & Wettre at 38°C that is of at least 25% more than the flexibility of said article when measured at 23°C. Support for the amendment is found in original Claim 2.

It is believed these changes do not involve any introduction of new matter. Consequently, entry of these changes is believed to be in order and is respectfully requested.

Rejection Under 35 USC §102 Over Anjur, et al

Claims 1-5, 7, 8, 10-13, 15 and 16 have been rejected under 35 USC 102(e) as being unpatentable over Anjur, et al. U.S. Patent No. 5,645,542, herein after referred to as "Anjur."

The Office Action states that Anjur discloses the claimed invention, a disposable article having a thermoplastic composition including a thermoplastic polymeric base material having particles of absorbent gelling material disposed therein. The Office Action states that Anjur does not disclose the testing the flexibility of the absorbent article at both room and body temperatures. The Office Action discloses the claimed composition that applicant has indicated imparts the desired properties. In as much, the Office Action states the teaching of Anjur provides all that is claimed in the instant application.

The Applicants respectfully traverse the rejection.

It is respectfully submitted that the Anjur does not anticipate the amended independent Claims 1. Specifically, Anjur does not teach a the flexible absorbent article has a flexibility when measured according to stiffness tester AB Lorentzen & Wettre at 38°C that is of at least 25% more than the flexibility of the article when measured at 23°C. Anjur does not disclose all the materials or the configuration of materials and/or the

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configuration of the absorbent article of the present invention. For example, does not disclose a polymeric base that is a hot melt adhesive. As well, Anjur does not disclose arranging the absorbent material in patterns. Therefore, Anjur does not disclose a flexible absorbent article with the properties as claimed. As a result, Anjur cannot anticipate the Applicants' Claims 1. Claims 3-16 depend from 1. Thus, Anjur does not render Claims 1-5, 7, 8, 10-13, 15 and 16 of the Applicants' present invention unpatentable under 35 U.S.C. § 102 (e).

Rejection Under 35 USC §103(a) Over Anjur, et al

Claims 1-5, 7, 8, 10-13, 15 and 16 have been rejected under 35 USC 103(a) as being unpatentable over Anjur.

The Office Action states that Anjur discloses the claimed invention, a disposable article having a thermoplastic composition including a thermoplastic polymeric base material having particles of absorbent gelling material disposed therein. The Office Action states that Anjur does not disclose the testing the flexibility of the absorbent article at both room and body temperatures. The Office action states that it would have been obvious to one having ordinary skill in the art at the time the invention was made to conduct a second flexibility test at body temperature because body temperature is the temperature at which the product is used, since it has been held that where the general conditions of the claim are disclosed in the prior art, discovering workable ranges involves only routine skill in the art. The Office Action discloses the claimed composition that applicant has indicated imparts the desired properties. In as much, the Office Action states the teachings of Anjur provide all that is claimed in the instant application. The Office Action states that it would have been obvious to provide the material that meets the required test properties since the general conditions of the claimed invention are disclosed in the prior art and discovering optimum ranges involves only routine skill in the art.

The Applicants respectfully traverse the rejection. The rejection is traversed for two reasons. First, Anjur does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of Claims 1. Second, even if a *prima facie* case was established, the obviousness argument is overcome by the showing of unexpected results in the specification. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.

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First, Anjur does not teach or suggest all of the claim limitations of Claims 1. Specifically, Anjur does not teach a the flexible absorbent article has a flexibility when measured according to stiffness tester AB Lorentzen & Wettre at 38°C that is of at least 25% more than the flexibility of the article when measured at 23°C.

Even if a *prima facie* case has been established, the presumption of obviousness has been overcome by a showing of unexpected results over the prior art.

The Applicants' specification is sufficient to establish unexpected results over prior art absorbent articles. It is show that the flexibility of the present invention and that of the prior art yield different flexibility behaviors. (See specification page 31, lines 20 to page 32, line 5). The prior art tested include Carefree Extra Thin Breathable pantiliner and Sarasarty ex Kobayashi. Carefree Extra Thin Breathable pantiliner is a commercially available liner on European market (manufacturer: Kimberly-Clark) with an absorbent element being made of cellulose, polyethylene and polypropylene fibers. Sarasarty ex Kobayashi with an absorbent element made of synthetic fibers is commercially available on Japanese market. For each type of article to be tested 10 articles were respectively analyzed for their respective flexibility behavior. For each article 2 samples were prepared as described in test method described herein before: one was tested at room temperature condition (23°C) the other one was tested at body temperature condition (38°C) as described in the specification. The average value obtained respectively out of the 10 samples tested under each condition are reported in table I below. The flexibility data reported below in table I is the one measured in transverse direction (i.e., cross direction CD). In the tests, the lower the flexibility value expressed in mN , the more flexible the article is.

TABLE I

Article tested	Flexibility expressed in mN at 23°C CD	Flexibility expressed in mN at 38°C CD	Flexibility increase in %	Dunk capacity expressed in grams
Pantiliner A	54	35	35.2	7.0
Carefree	97	88	9.3	-
Sarasarty	37	31	16.2	-

As shown in the above chart, the percentage of flexibility of the present invention between room and body temperature is greater than that of the prior art.

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These results clearly reflect the objective of the present inventions. The object of the present invention is to provide a flexible absorbent article that provide high comfort in use while being easy to handle per wearer before use. The Applicants found that too flexible article may be difficult to handle for the wearer before use typically when removing the release liner and attaching it to the undergarment. In contrast, the objective of Anjur is to provide an absorbent structure which is capable of stretching and conforming to the body of a wearer and yet is able to rapidly absorb a discharged liquid under pressures typically encountered during use and to retain the absorbed liquid under pressures typically encountered during use. Anjur is not concerned with ease of handling prior to use.

Thus, it is respectfully submitted that WO publication does not teach or suggest the flexible absorbent article of the present invention. One skilled in the art at the time the invention was made would have to do more than merely adjust the materials to arrive at the present invention. In order to arrive at the present invention, one would have to change the entire objective of Anjur before choosing type and amount of materials that result in the desired flexibility behavior.

Therefore, Anjur does not render the Applicants' Claims 1. Claims 3-16 depend from Claim 1. Thus, Anjur does not render Claims 1-4, 6-11 and 13-14 of the Applicants' present invention unpatentable under 35 U.S.C. § 103 (a).

Rejection Under 35 USC §103(a) Over Anjur, et al. in view of Osborn, III

Claim 6 is rejected under 35 USC 103(a) as being unpatentable over Anjur in view of Osborn, III (U.S. Patent No. 5,009,653), hereinafter referred to as "Osborn."

The Office Action states that Anjur discloses that the use of absorbent gelling material in high concentration in an absorbent structure allows for thin lightweight absorbent articles which still can function in the desired manner. The Office Action states that Osborn teaches a thin, flexible sanitary napkin having a caliper of less than 3 mm and an absorbent core containing from about 5% to 85% by weight of absorbent material which is distributed in the amount from 0.001-0.009 grams/ square centimeter. The Office Action states that it would have been obvious to one skilled in the art at the time the invention was made to make the disposable article of Anjur less than 3mm thick in view of the teachings of Osborn so as to form an absorbent article that is thinner and

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less bulky thereby offering the wearer enhanced fit and comfort yet still having a fluid capacity great enough to allay consumer fears of leakage and staining. The Office Action states this would have been an obvious modification of the art.

The Applicants respectfully traverse the rejection. The rejection is traversed for two reasons. First, the combination of Anjur and Osborn does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of Claims 1. Second, even if a *prima facie* case was established, the obviousness argument is overcome by the showing of unexpected results in the specification. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.

First, Anjur in view of Osborn does not teach or suggest all of the claim limitations of Claims 1. Specifically, the combination of Anjur and Osborn does not teach a the flexible absorbent article has a flexibility when measured according to stiffness tester AB Lorentzen & Wettre at 38°C that is of at least 25% more than the flexibility of the article when measured at 23°C.

Even if a *prima facie* case has been established, the presumption of obviousness has been overcome by a showing of unexpected results.

The Applicants' specification is sufficient to establish unexpected results over prior art absorbent articles. It is show that the flexibility of the present invention and that of the prior art yield different flexibility behaviors. (See specification page 31, lines 20 to page 32, line 5). The prior art tested include Carefree Extra Thin Breathable pantiliner and Sarasarty ex Kobayashi. Carefree Extra Thin Breathable pantiliner is a commercially available liner on European market (manufacturer: Kimberly-Clark) with an absorbent element being made of cellulose, polyethylene and polypropylene fibers. Sarasarty ex Kobayashi with an absorbent element made of synthetic fibers is commercially available on Japanese market. For each type of article to be tested 10 articles were respectively analyzed for their respective flexibility behavior. For each article 2 samples were prepared as described in test method described herein before: one was tested at room temperature condition (23°C) the other one was tested at body temperature condition (38°C) as described in the specification. The average value obtained respectively out of the 10 samples tested under each condition are reported in table I below. The flexibility data reported below in table I is the one measured in transverse direction (i.e., cross direction CD). In the tests, the lower the flexibility value expressed in mN , the more flexible the article is.

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Carefree	97	88	9.3	-
Sarasarty	37	31	16.2	-

As shown in the above chart, the percentage of flexibility of the present invention between room and body temperature is greater than that of the prior art.

These results clearly reflect the objective of the present inventions. The object of the present invention is to provide a flexible absorbent article that provide high comfort in use while being easy to handle per wearer before use. The Applicants found that a too flexible article may be difficult to handle for the wearer before use typically when removing the release liner and attaching it to the undergarment. In contrast, the objective of Anjur is to provide an absorbent structure which is capable of stretching and conforming to the body of a wearer and yet is able to rapidly absorb a discharged liquid under pressures typically encountered during use and to retain the absorbed liquid under pressures typically encountered during use. As well, the objective of Osborn is to provide a napkin thin and flexible which is absorbent enough to absorb and contain medium to high menstrual flows. Anjur and Osborn are not concerned with ease of handling prior to use.

Thus, it is respectfully submitted that WO publication does not teach or suggest the flexible absorbent article of the present invention. One skilled in the art at the time the invention was made would have to do more than merely adjust the materials and thickness to arrive at the present invention and the thickness of the present invention. In order to arrive at the present invention, one would have to change the entire objective of Anjur and Osborn before choosing the type of materials, the amount of materials, and the thickness of materials that result in the desired flexibility behavior.

Therefore, Anjur does not render the Applicants' Claims 1. Claim 6 depends from Claim 1. Thus, Anjur does not render Claim 6 of the Applicants' present invention unpatentable under 35 U.S.C. § 103 (a).

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Rejection Under 35 USC §103(a) Over Anjur, et al. in view of Mostert

Claim 11 is rejected under 35 USC 103(a) as being unpatentable over Anjur in view of Mostert (U.S. Patent No. 4,937,138), hereinafter referred to as "Mostert."

The Office Action states that Anjur fails to teach an absorbent article wherein the polymeric base material is a hot melt adhesive. The Office Action states that Mostert teaches a substantially identical hot melt adhesive for disposable absorbent articles except for the ranges of plasticizer and resin. The Office Action states that it would have been obvious to one skilled in the art at the time the invention was made to vary proportions of plasticizer and resin to provide a hot melt adhesive capable of exhibiting good flexibility at the bonds, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. The Office Action states that as such, to use a hot melt adhesive type generally taught in Mostert as the polymeric base of Anjur would have been an obvious modification to one of ordinary skill in the art.

The Applicants respectfully traverse the rejection. The rejection is traversed for two reasons. First, the combination of Anjur and Mostert does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of Claims 1. Second, even if a *prima facie* case was established, the obviousness argument is overcome by the showing of unexpected results in the specification. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn. |

First, Anjur in view of Osborn does not teach or suggest all of the claim limitations of Claims 1. Specifically, the combination of Anjur and Mostert does not teach a the flexible absorbent article has a flexibility when measured according to stiffness tester AB Lorentzen & Wettre at 38°C that is of at least 25% more than the flexibility of the article when measured at 23°C.

Even if a *prima facie* case has been established, the presumption of obviousness has been overcome by a showing of unexpected results.

The Applicants' specification is sufficient to establish unexpected results over prior art absorbent articles. It is show that the flexibility of the present invention and that of the prior art yield different flexibility behaviors. (See specification page 31, lines 20 to page 32, line 5). The prior art tested include Carefree Extra Thin Breathable pantiliner and Sarasarty ex Kobayashi. Carefree Extra Thin Breathable pantiliner is a

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commercially available liner on European market (manufacturer: Kimberly-Clark) with an absorbent element being made of cellulose, polyethylene and polypropylene fibers. Sarasarty ex Kobayashi with an absorbent element made of synthetic fibers is commercially available on Japanese market. For each type of article to be tested 10 articles were respectively analyzed for their respective flexibility behavior. For each article 2 samples were prepared as described in test method described herein before: one was tested at room temperature condition (23°C) the other one was tested at body temperature condition (38°C) as described in the specification. The average value obtained respectively out of the 10 samples tested under each condition are reported in table I below. The flexibility data reported below in table I is the one measured in transverse direction (i.e., cross direction CD). In the tests, the lower the flexibility value expressed in mN, the more flexible the article is.

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Article tested	Flexibility expressed in mN at 23°C CD	Flexibility expressed in mN at 38°C CD	Flexibility increase in %	Dunk capacity expressed in grams
Pantiliner A	54	35	35.2	7.0
Carefree	97	88	9.3	-
Sarasarty	37	31	16.2	-

As shown in the above chart, the percentage of flexibility of the present invention between room and body temperature is greater than that of the prior art.

These results clearly reflect the objective of the present inventions. The object of the present invention is to provide a flexible absorbent article that provide high comfort in use while being easy to handle per wearer before use. The Applicants found that a too flexible article may be difficult to handle for the wearer before use typically when removing the release liner and attaching it to the undergarment. In contrast, the objective of Anjur is to provide an absorbent structure which is capable of stretching and conforming to the body of a wearer and yet is able to rapidly absorb a discharged liquid under pressures typically encountered during use and to retain the absorbed liquid under pressures typically encountered during use. As well, the objective of Mostert is to provide a more controllable hot melt adhesive. Anjur and Mostert are not concerned with ease of handling prior to use.

Thus, it is respectfully submitted that WO publication does not teach or suggest the flexible absorbent article of the present invention. One skilled in the art at the time

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the invention was made would have to do more than merely adjust the materials to arrive at the present invention and the thickness of the present invention. In order to arrive at the present invention, one would have to change the entire objective of Anjur and Mostert before choosing the type of materials and the amount of materials that result in the desired flexibility behavior.

Therefore, Anjur does not render the Applicants' Claims 1. Claim 11 depends from Claim 1. Thus, Anjur does not render Claim 11 of the Applicants' present invention unpatentable under 35 U.S.C. § 103 (a).

Rejection Under 35 USC §103(a) Over Anjur,et al. in view of Abuto, et al.

Claims 9 and 14 are rejected under 35 USC 103(a) as being unpatentable over Anjur in view of Abuto (U.S. Patent No. 6,765,125), hereinafter referred to as "Abuto."

The Office Action states that Anjur fails to teach configuring the absorbent material in a plurality of unattached spaced apart rows. The Office Action states that Abuto teaches placing a composition in spaced apart rows, zones, stripes or channels. The Office Action states that the plurality of longitudinal channels provide the article with increased flexibility about its longitudinal axis by creating a plurality of preferred bending axis. The Office Action states that one having ordinary skill in the art at the time the invention was made would configure the zones of absorbent material of Anjur in stripes or channels to improve the longitudinal fluid movement and distribution as taught by Abuto. The Office Action concludes that this would have been an obvious modification to one of ordinary skill in the art.

The Applicants respectfully traverse the rejection. The rejection is traversed for two reasons. First, the combination of Anjur and Abuto does not establish a *prima facie* case of obviousness because it does not teach or suggest all of the claim limitations of Claims 1. Second, even if a *prima facie* case was established, the obviousness argument is overcome by the showing of unexpected results in the specification. Therefore, the claimed invention is unobvious and that the rejection should be withdrawn.

First, Anjur in view of Abuto does not teach or suggest all of the claim limitations of Claims 1. Specifically, the combination of Anjur and Abuto does not teach a the flexible absorbent article has a flexibility when measured according to stiffness tester AB Lorentzen & Wettre at 38°C that is of at least 25% more than the flexibility of the article when measured at 23°C.

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Even if a *prima facie* case has been established, the presumption of obviousness has been overcome by a showing of unexpected results.

The Applicants' specification is sufficient to establish unexpected results over prior art absorbent articles. It is shown that the flexibility of the present invention and that of the prior art yield different flexibility behaviors. (See specification page 31, lines 20 to page 32, line 5). The prior art tested include Carefree Extra Thin Breathable pantiliner and Sarasarty ex Kobayashi. Carefree Extra Thin Breathable pantiliner is a commercially available liner on European market (manufacturer: Kimberly-Clark) with an absorbent element being made of cellulose, polyethylene and polypropylene fibers. Sarasarty ex Kobayashi with an absorbent element made of synthetic fibers is commercially available on Japanese market. For each type of article to be tested 10 articles were respectively analyzed for their respective flexibility behavior. For each article 2 samples were prepared as described in test method described herein before: one was tested at room temperature condition (23°C) the other one was tested at body temperature condition (38°C) as described in the specification. The average value obtained respectively out of the 10 samples tested under each condition are reported in table I below. The flexibility data reported below in table I is the one measured in transverse direction (i.e., cross direction CD). In the tests, the lower the flexibility value expressed in mN , the more flexible the article is.

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As shown in the above chart, the percentage of flexibility of the present invention between room and body temperature is greater than that of the prior art.

These results clearly reflect the objective of the present inventions. The object of the present invention is to provide a flexible absorbent article that provide high comfort in use while being easy to handle per wearer before use. The Applicants found that a too flexible article may be difficult to handle for the wearer before use typically when removing the release liner and attaching it to the undergarment. In contrast, the objective of Anjur is to provide an absorbent structure which is capable of stretching and

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conforming to the body of a wearer and yet is able to rapidly absorb a discharged liquid under pressures typically encountered during use and to retain the absorbed liquid under pressures typically encountered during use. As well, the objective of Abuto is to provide an absorbent structure that accepts fluid while maintaining a void volume. Anjur and Abuto is not concerned with ease of handling prior to use.

Thus, it is respectfully submitted that WO publication does not teach or suggest the flexible absorbent article of the present invention. One skilled in the art at the time the invention was made would have to do more than merely adjust the materials and thickness to arrive at the present invention and the thickness of the present invention. In order to arrive at the present invention, one would have to change the entire objective of Anjur and Osborn before choosing the type of materials, the amount of materials, and the thickness of materials that result in the desired flexibility behavior.

Therefore, Anjur does not render the Applicants' Claims 1. Claims 9 and 11 depend from Claim 1. Thus, Anjur does not render Claims 9 and 11 of the Applicants' present invention unpatentable under 35 U.S.C. § 103 (a).

Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U. S. C §102 and 35 U. S. C §103. Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, entry of the amendments presented herein, and allowance of Claims 1 and 3-16 is respectfully requested.

Respectfully submitted,

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